

REMARKS

Applicants note with appreciation that the Office Action indicates that the preliminary amendment filed on October 11, 2005 are accepted.

Applicants note with appreciation that the Office Action acknowledges the claim to priority and indicates that the priority documents have been received.

Applicants note with appreciation that the Office Action includes a copy of the PTO SB/08 Forms that were submitted with the Information Disclosure Statements filed on April 3, 2007 and October 11, 2005. Each reference is initialed by the Examiner, thereby indicating that these references were considered and will be listed on the face of any patent that issues from the present invention.

Claim Amendments

Claim 27 has been amended to recite (i) a culture obtainable by inoculating and cultivating *Lactobacillus gasseri* OLL 2716 (FERM BP-6999) in a medium containing a whey protein derivative selected from a whey protein concentrate (WPC), a whey protein isolate (WPI) and a hydrolysate thereof, (ii) *Lactobacillus gasseri* OLL 2716 (FERM BP-6999) bodies isolated from the culture, and (iii) a residue of the culture obtainable by removing solid matters from the culture. Claim 30 have been amended to clarify the term "treated product." Claims 28, 29, 31, 32, 34, 35 and 38 have been canceled without prejudice/disclaimer. Claim 49 has been added to cover the subject matter deleted by the amendment of claim 27. The amendments are fully supported by the originally filed specification (e.g., page 9, line 20 to page 10, line 9; page 10, lines 12-22; page 11, line 11 to page 12, line 3, page 13, lines 7-10). No new matter has been added.

Claim Rejection – 35 U.S.C. § 112, ¶ 1 (enablement requirement)

Claim 38 was rejected because it fails to fully comply with 37 CFR 1.801-1.809. To comply with the rules, a statement regarding the deposit under the Budapest Treaty is concurrently submitted herewith. Thus, withdrawal of the rejection is requested.

Claim Rejections – 35 U.S.C. §112, ¶ 2 (indefiniteness)

Claims 27-38, 43 and 47-48 were rejected since the terms "crushed product," "a culture of the lactic acid bacterium," "a residue of the culture," "a treated product," "a whey protein derivative," "by neutralization culturing," "to a medium," and "administering."

The terms "crushed product," "a residue of the culture," "a treated product," "a whey protein derivative," and "to a medium" have been amended to be clarified. The term "by neutralization culturing" has been deleted without prejudice and disclaimer.

The term "a culture of the lactic acid bacterium" is not indefinite because the term "a culture of a microorganism" is widely used in the art to mean a culture containing a microorganism, as used in the Raczek reference (US 2003/0146399) cited in the Office Action (see, e.g., paragraph [0012]). Moreover, the term "culture of the lactic acid bacterium" has been more particularly specified by the amendment to claim 27.

Also, the term "administering" is not indefinite because the term is widely used in the art to mean "give remedially" and it is known in the art that there are a number of methods to give a certain amount of a feed supplement remedially and oral administration or parenteral administration are only one of those methods known in the art; thus, the term "administering" does not need to be further defined.

Accordingly, the rejections of the claims should be withdrawn.

Claim Rejections – 35 U.S.C. §102/103 (anticipation/obviousness)

Claim 27-38, 43 and 47-48 were rejected as being anticipated by or obvious over the Raczek reference or the Sobol reference (US Patent No. 6,953574). As amended,

claim 27 recites (i) a culture obtainable by inoculating and cultivating *Lactobacillus gasseri* OLL 2716 (FERM BP-6999) in a medium containing a whey protein derivative selected from a whey protein concentrate (WPC), a whey protein isolate (WPI) and a hydrolysate thereof, (ii) *Lactobacillus gasseri* OLL 2716 (FERM BP-6999) bodies isolated from the culture, and (iii) a residue of the culture obtainable by removing solid matters from the culture. Nothing in the Raczek and Sobol references teaches or suggests *Lactobacillus gasseri* OLL 2716 (FERM BP-6999). Thus, withdrawal of the rejections is requested.

Applicants believe that no additional fees are due, however, if for any reason a fee is required, the Office is hereby authorized and requested to charge Deposit Account No. **04-1105**.

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Respectfully submitted,

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